

AMENDMENT TO THE FIGURES

Figure 8 has been amended as per the instructions of the Examiner. Specifically, a legend, "Sample Location XML Document," has been added to the figure and the figure number has been reoriented. The legend agrees with the description filed in the application at ¶0022 (as referenced in the published application) and, therefore, does not add new matter. Applicants respectfully request entry of this Amendment.

REMARKS

Claims 1-10 and 12-34 are pending in the Application. The drawings are objected to because Figure 8 lacks a descriptive legend. The abstract of the disclosure is objected to because it contains the phrase “invention,” Claims 1, 12, 24 and 34 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 13 and 25 of copending App. No. 09/733,193 in view of Shah et al. (U.S. Pat. No. 5,758,313; herein after referred to as “Shah”). Claims 1, 5, 6, 10, 12, 16, 17, 21, 24, 28, 29 and 33 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Shah. Claims 2, 7, 13, 18, 22, 23, 25 and 30 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shah in view of Fitch et al. (U.S. Patent No. 6,321,092; herein after referred to as “Fitch”).

Objection to the Drawings

Figure 8 has been amended to add a descriptive legend, specifically “Sample Location XML Document.” Applicants respectfully request withdrawal of the objection to the drawings.

Objection to the Specification

An amended Specification has been submitted. Applicants respectfully request withdrawal of the objection to the Specification.

Rejections Based Upon Obviousness-Type Double Patenting

Applicants request that the rejection based upon obviousness-type double patenting be held in abeyance because future amendments to the claims may make the matter moot.

Rejections Based Upon 35 U.S.C. §102(b)

With respect to independent claims 1, 12, 24 and 34, Shah does not teach or suggest locating a user based upon the location of multiple devices. In brief, Shah is directed to locating a mobile device based upon information gathered from a plurality of sources and displaying the location of the device on a map. In contrast, the claimed subject matter 1) “acquires location data ... corresponding to mobile device[s]” and 2) “calculates a location of said user” (claim 1, *emphasis added*). In the technology provided by Shah, the location of a user cannot be

determined from the location of multiple devices unless an assumption is made that the devices and the user are in the same location. The claimed subject matter does not need to make this assumption and, in fact, assumes that in some cases this condition is not true. In other words, Applicants provide a method for the determination of the location of a user even though the user and at least some of the devices associated with the user may be in different locations. Applicant's claimed subject matter enables the location of the user to be ascertained from location data that may be contradictory, i.e. one device indicates a first location and a second device indicates a second location. Simply stated, Shah does not teach or suggest Applicants' claimed subject matter directed at resolving a user's location from conflicting location data corresponding to multiple devices.

Dependant claims 5, 6, 10, 16, 17, 21, 28, 29 and 33 are allowable at least for the fact that they depend upon one of the allowable independent claims. Applicants respectfully request withdrawal of the rejections of claims 1, 5, 6, 10, 12, 16, 17, 21, 24, 28, 29, 33 and 34.

Rejections Based Upon 35 U.S.C. §103(a)

With respect to independent claim 22, Fitch does not provide that which Shah lacks, i.e. locating a user from location information corresponding to multiple devices. Fitch is directed to a system in which coordinates, associated with a single device but generated by multiple sources, are resolved to calculate a location associated with the single device. There is simply no suggestion of calculating the location of a user based upon the location of devices associated with that user.

Dependant claims 2-4, 7-9, 13-15, 18-20, 23, 25-27 and 30-32 are allowable at least for the fact that they depend upon one of the allowable independent claims. Applicants respectfully request withdrawal of the rejections of claims 2-4, 7-9, 13-15, 18-20, 22, 23, 25-27 and 30-32.

CONCLUSION

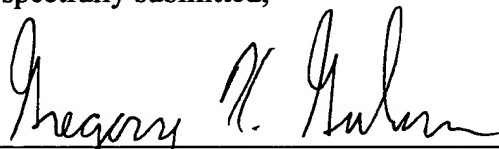
In order to reject a claimed invention under §102(b), the cited reference must teach every aspect of the claimed invention either explicitly or impliedly. (M.P.E.P. §706.02). To establish *prima facie* obviousness of a claimed invention under §103(a), all the claim limitations must be taught or suggested by the prior art. (M.P.E.P., §2143.03, citing *in re Royka*, 490 F.2d 981; 180 U.S.P.Q. 580 (CCPA 1974)). In addition, "**All words in a claim must be considered** in judging

the patentability of that claim against prior art.” (*Id.*, citing *In re Wilson*, 424 F.2d 1382, 1385; 165 U.S.P.Q. 494, 496 (CCPA 1970); *emphasis added*).

Independent claims 1, 12, 22, 24 and 34 are allowable for the reasons stated above. Each of dependant claims 2-10, 13-21 and 23-33 are allowable at least for the fact that they depend upon one of the allowable independent claims. It is respectfully submitted that all issues and rejections have been adequately addressed and that pending claims 1-10 and 12-34 are allowable and that the case should be advanced to issuance. If the Examiner has any questions or wishes to discuss the claims, the Examiner is encouraged to call the undersigned at the telephone number indicated below.

It is believed that no fees are due with the filing of this Response. However, should any fees are due, the Commissioner is hereby authorized to charge such fees to the deposit account of Greg Goshorn, P.C., Deposit Account No. 50-2491.

Respectfully submitted,



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